

Steven Shutiva
9/30/2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELIA LEON, individually and as
Personal Representative
of the Estate of Martin Leon, Deceased,
Plaintiff,

vs.

No. 1:13-CV-01005 JB/SCY

FEDEX GROUND PACKAGE SYSTEM, INC.,
Defendant.

VIDEOTAPED DEPOSITION OF STEVEN SHUTIVA
September 30, 2015
9:15 a.m.
Red Lion Hotel
1501 East Santa Fe Avenue
Grants, New Mexico 87020

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE this deposition was:

TAKEN BY: PAUL D. BARBER, ESQ.
ATTORNEY FOR PLAINTIFF

REPORTED BY: M. Teresa Torrez, CCR
New Mexico CCR #159
WILLIAMS & ASSOCIATES, LLC
1608 Fifth Street, Northwest
Albuquerque, New Mexico 87102

Clark & Associates
505-205-8435



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<p style="text-align: right;">Page 14</p> <p>1 me he . . . was traveling eastbound on Interstate 40 2 when a passerby in a pickup truck had utilized a flash 3 light to gain his attention and point out that he was 4 driving on a blown tire." So that's what he told me. 5 Q. Okay. And so he said that he pulled over -- 6 A. Pulled on the shoulder to assess the damaged 7 tire, made the decision to turn around at the 89 8 off-ramp, head back west towards the Petro Travel Center 9 located at the 79 exit of Interstate 40. 10 Q. Okay. Did you talk to the driver of Vehicle 11 #2? That would be the FedEx truck. 12 A. Mr. Martinez? 13 Q. Martinez-Leandro. 14 A. Again, I tried talking to him. He was pretty 15 much in a state of shock. He couldn't really say 16 anything or recall anything at all. 17 Q. Okay. On page 3 of the report -- Sorry, I had 18 a marker on that, and then I lost the marker. 19 A. It just states on my report that he remembered 20 but <u>thought he fell asleep</u>. 21 Q. What page are you looking at? 22 A. 3 of 7. 23 Q. 3 of 7. Okay. That's what I was -- 24 A. Probably there. 25 Q. So there -- just past the middle, could you</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes. 2 MR. KAEMPER: Object to form, foundation. 3 Q. Could you understand him? 4 A. Yes, I did. 5 Q. Okay. Did he tell you anything else about 6 what -- how the crash happened, that you can remember, 7 other than the statement? 8 A. I believe he said he was traveling on the 9 right lane of eastbound Interstate 40, but I -- I don't 10 recall any specifics of what he had told me. 11 Q. Okay. Did he give you any indication of why 12 he ran into the back of another truck? 13 A. I don't recall at this time. Sorry. 14 Q. Did you ever go -- did you ever visit him in 15 the hospital? 16 A. I wanna say I did, but it's been such a long 17 time that I -- I really don't recall. 18 Q. Okay. This conversation is a conversation you 19 had at the scene of the crash. 20 A. Yes, it is. 21 Q. What else do you recall about the crash? 22 A. I remember Deputy James saying he had to cut 23 out the driver of his seat belt, driver to Mr. Martinez. 24 And that's how they got him out of the cab. Again, just 25 a lot of damage at the scene. I know one of the</p>
<p style="text-align: right;">Page 15</p> <p>1 read that statement. Where "I observed . . ." 2 A. "I observed a visible head injury to the top 3 of -- top front of Driver 2's head that was bleeding 4 profusely. Driver 1 -- or Driver 2 was conscious and 5 responsive . . . I asked him what [had] happened. 6 <u>Driver 2 stated he didn't remember but [thought] he fell</u> 7 <u>asleep.</u> Mt. Taylor ambulance arrived on scene and 8 tended to Driver 2's injuries and [he] was transported 9 to the Cibola General Hospital for further treatment of 10 his injuries." 11 Q. Okay. Now, what I want to know is, is -- are 12 you the "I" in that paragraph? 13 A. Yes. 14 Q. So this is a report of what you did? 15 A. Yes. 16 Q. And the driver of Vehicle #2 told you that he 17 thought he fell asleep. 18 A. Yes, he did. 19 Q. Did you speak to him in English or Spanish 20 or -- 21 A. In English. 22 Q. Okay. Did he seem to understand you? 23 A. Yes, he did. 24 Q. And he answered so that you could understand 25 him.</p>	<p style="text-align: right;">Page 17</p> <p>1 responding fire -- or EMT vehicles had ran over some 2 debris and caused damage to their vehicle as well. 3 I wanna say there was a secondary crash on 4 the eastbound lane due to people, I guess, not paying 5 attention to the roadway and looking at what was going 6 on. So there was another secondary crash, and I believe 7 one of the other deputies on scene handled that. 8 Q. Okay. That's not recorded in this -- 9 A. No, it's not -- 10 Q. -- crash report. 11 A. -- not part of this incident here, so it was 12 considered a separate crash. But, yeah, I remember 13 going through the scene. It was clear to me, you know, 14 through my years of experience and having handled 15 crashes, that the statement from Mr. Payne was 16 inaccurate of him being on the shoulder. 17 Q. Okay. 18 A. Because everything indicated, on the roadway, 19 that the crash happened on the roadway in the right 20 eastbound lane. That was later confirmed by Sergeant 21 Rick Doty of the State -- New Mexico State Police. 22 Q. And did -- were you able to observe or form an 23 opinion as to how the crash happened? 24 A. Yes, I did. 25 Q. What -- what is that?</p>